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May 24, 2023

**Via ECF**

Hon. Mary Kay Vyskocil  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 5/25/2023
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**Re: United States v. Chan  
20 Cr. 160 (MKV)**

Dear Judge Vyskocil:

We write in furtherance of our request at this morning's sentencing hearing that the Court recommend that Dr. Chan be designated by the Bureau of Prisons to the minimum security camp at FCI Otisville.

At today's sentencing proceeding, the Court declined to make a designation recommendation for a specific BOP facility, indicating that specific institution requests were not permitted. We respectfully direct the Court to 18 U.S.C. § 3621(b)(4)(B), which provides that the BOP is to consider "any statement" by the sentencing court "recommending a type of penal or correctional facility as appropriate," as well as the Supreme Court's decision in *Tapia v. United States*, 564 U.S. 319, 331 (2011), which noted that "[a] sentencing court can recommend that the BOP place an offender *in a particular facility* or program. *Id.* (emphasis added).

In addition, BOP Program Statement 5100.08, "Inmate Security and Custody Classification," which reflects the most recent BOP policies and procedures relating to inmate designation, states that among the many factors for BOP consideration is a designation recommendation by the sentencing court.<sup>1</sup> Program Statement 5100.08 states, "The court may recommend *a specific institution* or geographical region for a newly committed inmate," and it directs the BOP to "enter the name of the recommended institution" in the system as an initial step in making a designation determination. *Id.* at Ch. 4, Page 5 (emphasis added); *see also id.* at Ch.. 5, Page 3 ("The sentencing court may recommend a specific institution or program."). Program Statement 5100.08 also provides that, if a specific facility is entered, "that facility will appear at the top of the list presented to the Designator for consideration." *Id.* at Ch. 4, Page 5.

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<sup>1</sup> Available at [https://www.bop.gov/policy/progstat/5100\\_008cn.pdf](https://www.bop.gov/policy/progstat/5100_008cn.pdf).

Hon. Mary Kay Vyskocil  
United States District Judge

*United States v. Chan*  
20 Cr. 160 (MKV)

Accordingly, we respectfully request that the Court reconsider its designation recommendation and include in its judgment order a recommendation that Dr. Chan be designated by the Bureau of Prisons to the minimum security camp at FCI Otisville, in order to facilitate family visits with his loved ones in the New York City metropolitan area. The Government does not object to this request.<sup>2</sup>

Respectfully submitted,

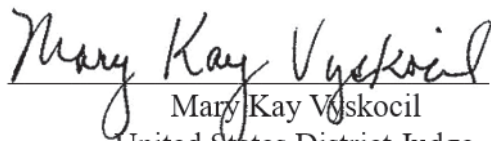
/s/ Neil Kelly

Neil P. Kelly  
Assistant Federal Defender  
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cc: AUSA Sarah Mortazavi

The Court will recommend a facility near the New York City metropolitan area.

Date: May 25, 2023  
New York, New York

  
Mary Kay Vyskocil  
United States District Judge

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<sup>2</sup> To the extent the Court has concerns that this renewed request is being made after the conclusion of the sentencing hearing, we respectfully note that the Court can make such “non-binding recommendations to the Bureau of Prisons at any time.” *United States v. Ceballos*, 671 F.2d 852, 856 n.2 (9th Cir. 2011); see e.g., *United States v. Pealy*, 21 Cr. 469 (PKC) (S.D.N.Y. Apr. 29, 2022), Dkt. 31 (amending judgment to recommend that defendant be designated to a specific BOP facility); *United States v. St. Vallier*, 07 Cr. 613 (SDW), 2021 WL 689118, at \*6 (D.N.J. Feb. 23, 2021); *United States v. Paul*, 01 Cr. 636 (LDW) (E.D.N.Y. Oct. 23, 2009), Dkt. 251.